

DOCUMENT RESUME

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[Protest against Rejection of Bid as Late]. B-188701. August 8, 1977. 4 pp.

Decision re: Daymar, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Federal Aviation Administration: Federal Aviation Aeronautical Center, Oklahoma City, OK; Wynn Construction Co.

Authority: F.P.R. 1-2.303. F.P.R. 1-2.201(31). F.P.R. 1-2.407-8(b). 55 Comp. Gen. 220. 55 Comp. Gen. 222. 54 Comp. Gen. 304. B-182826 (1975). B-179405 (1974). B-187025 (1977).

The protester objected to the rejection of their bid as late. The bid, delivered by commercial carrier to the central receiving docks rather than to the office designated in the invitation and received by agency personnel about 6.5 hours prior to bid opening, was properly rejected as a late bid since it was not received by the contracting officer or time-date stamped until after bid opening. The contracting officer's award of the contract after the oral protest but before the receipt of the written protest does not violate procurement regulations, since the withholding of an award is not mandatory and the record supports the adequacy of the contracting officer's determination of urgency. (Author/SC)

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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-188701

DATE: August 8, 1977

MATTER OF: Daymar, Inc.

## DIGEST:

1. Bid delivered by commercial carrier to central receiving docks, rather than to office designated in IFB for delivery of bids, and receipted by agency personnel about 6-1/2 hours prior to bid opening is properly rejected as late bid when received by contracting officer and time-date stamped after bid opening.

2. Contracting officer's award of contract due to urgency after oral protest but before receipt of written protest does not violate Federal Procurement Regulations § 1-2.407-8(b)(1) and (4), because withholding of award is not mandatory, and record supports adequacy of contracting officer's "Summary of Urgency."

Daymar, Inc. (Daymar), protests award of contract No. DOT-FA77AC-7113 by the Federal Aviation Aeronautical Center, Oklahoma City, Oklahoma (FAA), to Wynn Construction Company (Wynn), for air route surveillance radar site preparation at the Aeronautical Center, resulting from invitation for bids (IFB) No. AC3B-7-0094.

The IFB, issued February 16, 1977, advised bidders that:

"sealed bids \* \* \* will be received until 3:00 p.m., March 16, 1977 \* \* \* at the bid depository located in Room 313, Multi-Purpose Building, 6500 South MacArthur Boulevard, Oklahoma City, Oklahoma \* \* \*"

Daymar's bid was delivered by Federal Express Corporation, a commercial carrier. The protester asserts that delivery was to the aforementioned address at 8:22 a.m. on March 16, 1977, and that a Government employee gave a written receipt for the bid package.

Bid opening was held as scheduled on March 16, 1977; four bids were received, and Wynn was the apparent low bidder. In response to a telephone call from Daymar personnel subsequent to bid opening, FAA's contracting officer ascertained that Daymar's bid package was at the installation's receiving dock and arranged for pickup the following morning, and stamped the bid at 7:35 a.m. on March 17, 1977.

Daymar personnel telephonically advised FAA that Daymar protested award of a contract under the solicitation in question unless the firm's bid was considered for award and that the protest would be submitted in writing immediately. The protest was submitted to FAA by letter of March 17, 1977. Due to the urgency of the requirements, award was made to Wynn on March 17, 1977, notwithstanding Daymar's oral protest. By letter of March 21, 1977, FAA denied the firm's protest and the bid was returned unopened to Daymar.

Daymar contends that because its bid was delivered to the FAA installation prior to bid opening and was receipted by an FAA employee, the bid is not a "late bid." We cannot agree with Daymar. It is our opinion that Daymar's bid was correctly characterized and treated in accordance with Federal Procurement Regulations (FPR) § 1-2.303-1 (1964 ed. amend. 118), which provides:

"Bids received at the office designated in the invitation for bids after the exact time set for opening of bids are late bids. Late bids shall not be considered for award except as authorized in this § 1-2.303." (Emphasis added.)

In this regard, paragraph 7 of form FAA-22 of the IFB incorporated FPR § 1-2.201(31) (1964 ed. amend. 153), which provides, in pertinent part, for consideration of late bids as follows:

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids \* \* \*

"(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

\* \* \* \* \*

"(c) The only acceptable evidence to establish:

\* \* \* \* \*

"(2) The time of receipt at the Government installation is the time-date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation."

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Our Office has consistently held that the bidder is responsible for the timely arrival of a bid and must bear the consequences which follow if the bid arrives late. Lo-Rencin Contracting Co., Inc., B-188329, February 25, 1977, 77-1 CPD 144; B.E. Wilson Contracting Corp., 55 Comp. Gen. 220, 222 (1975), 75-2 CPD 145.

The record indicates that the commercial carrier delivered Daymar's bid package to FAA's receiving docks at 9:22 a.m. on March 16, 1977. FAA has informed us that the central receiving docks are located in a warehouse removed from both the mailroom and the Multi-Purpose Building designated in the IFB. These docks operate under a separate organizational function responsible for receiving freight delivered by commercial carriers. Dock personnel routinely issue receipts to commercial carriers for parcels; they are responsible for clearing carriers' freight bills and acknowledge only that packages were received. Parcels received at the docks are normally delivered via the Center's delivery service within 1-1/2 to 3 days of receipt at the docks.

There is no question that the bid package was not delivered to the address specified in the IFB. The bid was not received in the designated office until after bid opening, and the time-date stamp on the bid evidences that fact. Thus, Daymar's bid was a late bid; it was entitled to be considered for award only if sent by one of the methods prescribed in the exceptions enumerated above. As we have held in substantially similar cases, because Daymar's bid was sent by commercial carrier rather than by mail, it was not entitled to be considered for award. Greer Hydraulics, Inc., B-182826, April 22, 1975, 75-1 CPD 249; Federal Contracting Corporation, et al., 54 Comp. Gen. 304 (1974), 74-2 CPD 229; Rocket Research Corporation, B-179405, January 24, 1974, 74-1 CPD 28. Moreover, consideration of the protester's bid was proscribed by FPR § 1-2.303-5 (1964 ed. amend. 118), which requires that:

"A late hand-carried bid, or any other late bid not submitted by mail or telegram, shall not be considered for award." (Emphasis added.)

Daymar additionally asserts that FAA's award of the contract to Wynn after the agency was orally advised of Daymar's protest violates FPR § 1-2.407-8(b)(1) and (4) (1964 ed. amend. 68). Pursuant to subsection (b)(1) of the regulation, the contracting officer "may require that written confirmation of an oral protest be submitted by a specified time" (emphasis added) and withhold award until that time. The language of this regulation, however, is not mandatory; FAA's contracting officer considered that course of conduct inappropriate due to the exigencies of the procurement. Subsection (b)(4)(i) permits an award to be made when the contracting officer determines that the agency's requirements are urgently required.


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FAA not only believes that award on the basis of urgency was proper but also takes the position that Daymar was aware of the urgent nature of the procurement. The IFB expressly stated that the project was of a critical nature, the nature of the requirement was discussed during a pre-bid conference held 9 days after issuance of the solicitation, and Article II of the IFB Schedule set forth an elaborate incentive clause to insure expedited performance. In addition to citing the IFB provisions, above, which indicate the critical nature of the procurement and the need for expedited performance, the contracting officer also stated, in pertinent part, in his "Summary of Urgency" that:

"[D]elays in FAA site preparation would subject the Government to delay costs and possible delays to the production of ARSR-3 systems. The FAA Academy installation is the prototype for all production ARSR-3 systems to be installed."

We cannot, therefore, conclude that the FAA's explanation of the need for an immediate award to Wynn was inadequate or failed to comply with the applicable regulation.

Accordingly, Daymar's protest is denied. For this reason, we decline to consider Daymar's alternative claim for damages, including but not limited to lost profits. See Swage Air Tool Supply, Inc., B-187025, March 10, 1977, 77-1 CPD 178.

  
Deputy Comptroller General  
of the United States